UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,088	10/22/1999	HIMANSHU S. SINHA	99-829	9057

7590 09/18/2002

LEONARD C SUCHYTA
GTE SERVICE CORPORATION
600 HIDDEN RIDGE
HQE03G13
IRVING, TX 75038

EXAMINER
BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
2152	

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PRA

Office Action Summary	Application No.	Applicant(s)	
	09/425,088	SINHA, HIMANSHU S.	
	Examiner	Art Unit	
	Douglas B Blair	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 1999* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-4 and 12-13 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,243,396 to Somers.

3. As to claim 1, Somers teaches a system having a client computer system and a service provider computer system programmed with a service implementation, an apparatus comprising: a service level agreement manager disposed between the client computer system and the service implementation (In col. 10, lines 66-67 and col. 11, lines 1-48, the customer communicates with the authority. In col. 2, lines 62-27 and col. 3, lines 1-3, the authority controls the resources. The customer is a client, the authority is a service level agreement manager, and the resource is a service implementation.), the service level agreement manager comprising: an admission controller configured to control admission of the client computer system to the service

implementation using a service level agreement (col. 10, lines 66-67 and col. 11, lines 1-48, The service agent implements a service level agreement to control admission.); a performance measurement module in communication with the admission controller and configured to measure performance of the service implementation (col. 10, lines 66-67 and col. 11, lines 1-48, The performance agent is a performance module.); and a specification module in communication with the admission controller and with the performance measurement module (col. 10, lines 66-67 and col. 11, lines 1-48, The configuration agent is in communication with the service agent and also the performance agent via the service agent.).

4. As to claim 3, Somers teaches a method for service level formation, comprising: providing a client computer system (col. 10, lines 66-67 and col. 11, lines 1-48, The customer.); providing a service level agreement manager (col. 10, lines 66-67 and col. 11, lines 1-48, The authority.), the service level agreement manager having an admission controller, a specification module and a performance measurement module (col. 10, lines 66-67 and col. 11, lines 1-48); establishing communication between the client computer system and the service level agreement manager (col. 10, lines 66-67 and col. 11, lines 1-48, The customer interfaces the authority.); invoking the specification module of the service level agreement manager (col. 10, lines 66-67 and col. 11, lines 1-48, The configuration agent is contacted by the service agent.); obtaining performance information from the performance measurement module (col. 10, lines 66-67 and col. 11, lines 1-48, the performance sends out reports to the service agent.); obtaining usage information associated from the client (col. 10, lines 66-67 and col. 11, lines 1-48, The service agent obtains usage information from the customer.); and comparing the performance

information and the usage information to determine if there exists a basis for forming a service level agreement (col. 10, lines 66-67 and col. 11, lines 1-48, The service agent forms an SLA.).

5. As to claim 4, Somers teaches the method of claim 3, further comprising: forming the service level agreement; and providing the admission controller with the specification information from the service level agreement formed (col. 10, lines 66-67 and col. 11, lines 1-48).

6. As to claim 12, Somers teaches a network, comprising: a client process (col. 10, lines 66-67 and col. 11, lines 1-48); a first plurality of service level managers (Figure 1 shows a plurality of authorities, which function as service level managers); at least one invocation infrastructure for communication between said first plurality of service level managers and said client process (col. 10, lines 66-67 and col. 11, lines 1-48, the system uses KQML messages.); each service level manager of said first plurality of service level managers in communication with a respective service implementation of a first plurality of service implementations (Figure 1 shows the authorities in contact with a plurality of service implementations (resources).); each said service implementation of said first plurality of service implementations in communication with at least one service level manager of a second plurality of service level managers (In Figure 1, the service implementations are in contact with other service level managers via their respective service level manager.); and each service level manager of said second plurality of service level manager in communication with a respective service implementation of a second plurality of service level implementations (In Figure 1, each service level manager is connected to a plurality of service implementations.).

7. As to claim 13, Somers teaches the network of claim 8, wherein the invocation infrastructure comprises a Common Object Request Broker Architecture (col. 5, lines 48-53).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,243,396 to Somers.

11. As to claim 2, Somers teaches the apparatus of claim 1; however, Somers does not teach an apparatus wherein the specification module is configured to compare service implementation performance data and client usage information.

Somers does teach an apparatus wherein the service agent compares the service implementation performance data and client usage information (col. 10, lines 66-67 and col. 11, lines 1-48).

It would have been obvious to one of ordinary skill in Computer Networking art at the time of the invention to combine the teachings of Somers regarding an SLA system with the teachings of Somers regarding comparing data because service agent forwards the results of the comparison to the configuration agent (col. 10, lines 66-67 and col. 11, lines 1-48), which performs similar functions to the specification module.

12. As to claim 14, Somers teaches the network of claim 12; however Somers does not teach an infrastructure comprising Java Remote Method Invocation.

Official notice is taken that it was well known in the Computer Networking art at the time of the invention to use Java Remote Method Invocation at the time of the invention.

It would have been obvious to one of ordinary skill in the art of Computer Neworking at the time of the invention to combine the teachings of Somers regarding service level agreements with Java RMI because Java RMI is a standard way to create distributed applications such as SLA's.

13. Claims 5-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,243,396 to Somers in view of U.S. Patent Number 6,446,200 to Ball et al..

14. As to claim 5, Somers teaches a method for managing system performance, comprising: providing a service level agreement manager; providing a client organization (col. 10, lines 66-67 and col. 11, lines 1-48, The customer.); providing a service organization (col. 10, lines 66-67 and col. 11, lines 1-48, The authority.); forming a service level agreement between the client organization and the service organization (col. 10, lines 66-67 and col. 11, lines 1-48, The service agent forms an SLA.); receiving a request from the client organization to the service level agreement manager (col. 10, lines 66-67 and col. 11, lines 1-48, The customer sends a message to the service agent, which is part of the authority.); with the service level agreement manager, determining if the request is within the scope of the service level agreement (col. 10, lines 66-67 and col. 11, lines 1-48, The service agent responds to the customer by checking SLA parameters.); if the request is within the scope of the service level agreement, providing the request to a performance measurement module (col. 12, lines 62-67 and col. 13, lines 1-16, The

performance agent analyzes traffic associated with the resource.) and to the service organization (col. 11, lines 49-62); taking at least one performance measurement associated with performance response of the service organization to the request (col. 12, lines 62-67 and col. 13, lines 1-16, The performance agent analyzes traffic associated with the resource.); and checking the at least one performance measurement taken against the service level agreement (col. 10, lines 66-67 and col. 11, lines 1-48); however Somers does not explicitly teach obtaining a result from the service organization in response to the request.

Ball teaches obtaining a result from the service organization in response to the request (col. 5, lines 26-56, The system Internet service provider obtains a result based on the a request.).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Somers regarding an SLA system with the teachings of Ball regarding returning a response to an intermediate system because both are systems for implementing service level agreements and Somers invention would be pointless if results were never returned to the customer.

15. As to claim 6, Ball teaches the method of claim 5, further comprising recording the at least one performance measurement (col. 4, lines 61-67 and col. 5, lines 1-24).

16. As to claim 7, Ball teaches the method of claim 6, further comprising providing the result obtained to the client (col. 5, lines 26-56, An Internet service provider returns results to clients.).

17. As to claim 8, Somers teaches a network, comprising: a client process (col. 10, lines 66-67 and col. 11, lines 1-48); a plurality of service level managers (col. 10, lines 66-67 and col. 11, lines 1-48); at least one invocation infrastructure for communication between the client process and the plurality of service level managers (col. 5, lines 48-53); and each service level manager

of the service level managers in communication with a respective service implementation (col. 2, lines 62-27 and col. 3, lines 1-3); however, Somers does not explicitly teach a plurality of client processes.

Ball teaches a plurality of client processes (col. 34, lines 56-67 and col. 35, lines 1-16, The system is used by multiple subscribers.).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Somers regarding an SLA system with the teachings of Ball regarding the provision of service to multiple customers because both are systems for implementing service level agreements and Somers invention would not be practical if it only allowed access for one customer.

18. As to claim 9, Somers teaches the network of claim 8, wherein the invocation infrastructure comprises a Common Object Request Broker Architecture (col. 5, lines 48-53).

19. As to claim 10, the teachings of Somers and Ball combine to make the teachings of claim 8 obvious; however Somers and Ball do not teach an infrastructure comprising Java Remote Method Invocation.

Official notice is taken that it was well known in the Computer Networking art at the time of the invention to use Java Remote Method Invocation at the time of the invention.

It would have been obvious to one of ordinary skill in the art of Computer Neworking at the time of the invention to combine the teachings of Somers and Ball regarding service level agreements with Java RMI because Java RMI is a standard way to create distributed applications such as SLA's.

20. As to claim 11, Ball teaches a network wherein the invocation infrastructure comprises http (col. 8, lines 1-24).

21. As to claim 15, Somers teaches the network of claim 12; however, Somers does not explicitly teach the use of http.

Ball teaches a network wherein the invocation infrastructure comprises http (col. 8, lines 1-24).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Somers regarding an SLA system with the teachings of Ball regarding the use of http because both are systems for implementing service level agreements and http is a standard way to communicate in a network.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 9am-6:30pm Mon-Thurs, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart can be reached on (703)305-4815. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-9731 for regular communications and (703)305-9731 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

DBB
Douglas Blair
September 11, 2002

LE HIEN LUU
PRIMARY EXAMINER